

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BLAINE WILMOTTE and MADISON
WILMOTTE,

Plaintiffs,

v.

NATIONAL RAILROAD PASSENGER
CORPORATION, d/b/a AMTRAK,

Defendant.

Case No.

**NOTICE OF REMOVAL TO
FEDERAL COURT**

Defendant National Railroad Passenger Corporation d/b/a Amtrak ("Amtrak") by and through its attorneys, hereby removes the above-captioned action, currently pending in the Superior Court of King County, Washington, to the United States District Court for the Western District of Washington. Removal is based on 28 U.S.C. §§ 1331, 1332, 1349, and 1367 and authorized by 28 U.S.C. §§ 1441 and 1446. As grounds for removal, Defendant states:

I. BACKGROUND

Plaintiffs commenced this action by filing their lawsuit in King County Superior Court, on or about January 4, 2018, under Cause No. 18-2-00455-1 SEA (the "State Court Action"). Pursuant to LCR 101(b), a true and correct copy of the operative complaint in the State Court Action is appended hereto as **Exhibit A**.

II. STATUTORY REQUIREMENTS

A. **Federal Question Jurisdiction.** Federal question jurisdiction exists in this action

NOTICE OF REMOVAL TO FEDERAL COURT - 1

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1 because Plaintiffs have asserted a claim against Amtrak, a federally chartered corporation whose
2 majority stockholder is the United States of America.

3 Amtrak was created under the Rail Passenger Service Act of 1970, 45 U.S.C. § 541, *et*
4 *seq.* (recodified as 49 U.S.C. § 24101-24709) and is therefore a federally chartered corporation.
5 In the *Pacific Railroad Removal Cases*, 115 U.S. 1 (1885), the United States Supreme Court
6 ruled that an action against a federally chartered corporation presented a federal question under
7 28 U.S.C. § 1331. As a result, this Court has original jurisdiction of this action against Amtrak
8 under 28 U.S.C. § 1331, which provides for original jurisdiction in cases that arise under the laws
9 of the United States, and 28 U.S.C. § 1349, which provides for original jurisdiction over claims
10 against corporations where the United States owns more than 50 percent of the capital stock. *See*
11 *Aliotta v. National R.R. Passenger Corporation*, 315 F.3d 756 (7th Cir. 2003); *Walker v. National*
12 *R.R. Passenger Corp.*, 703 F. Supp. 2d 495, 500 (D. Md; 2010) and *Hollus v. Amtrak*, 937 F.
13 Supp. 1110, 1113-14 (D. N.J. 1996).

14 B. Diversity Jurisdiction.

15 1. Complete Diversity Exists. Diversity jurisdiction exists in this action because
16 Plaintiffs and Amtrak are citizens of different states. 28 U.S.C. § 1332(a)(1). “Complete
17 diversity exists when the parties are domiciled in separate states.” *Umouyo v. Bank of Am., N.A.*,
18 No. 2:16-CV-01576-RAJ, 2017 WL 1532664, at *2 (W.D. Wash. Apr. 28, 2017) (citing *Kanter*
19 *v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001)). Plaintiffs are domiciled in and are
20 therefore citizens of Idaho. Yates Decl. ¶ 3; *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088,
21 1090 (9th Cir. 1983). “Amtrak is a citizen only of the District of Columbia when deciding
22 original jurisdiction of the district courts of the United States in a civil action.” 49 U.S.C.
23 § 24301(b). Plaintiffs and Amtrak are therefore citizens of different states for diversity
24 jurisdiction purposes. Finally, the citizenship of “Doe” defendants is disregarded for purposes
25 of the diversity jurisdiction analysis. 28 U.S.C. § 1441(b). *See* Complaint at ¶ 1.5.

26 2. Amount in Controversy. The Complaint seeks economic and noneconomic
27 damages for alleged serious physical and mental injuries arising out of the December 18, 2017
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derailment of Amtrak Cascades Train No. 501. Complaint ¶¶ 5.1-5.2. Given the nature of Plaintiffs' claims and alleged damages, Amtrak alleges that the amount in controversy is expected to exceed the jurisdictional threshold of \$75,000. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554, 190 L. Ed. 2d 495 (2014) (explaining that a removing defendant need only make "a plausible allegation that the amount in controversy exceeds the jurisdictional threshold" if the amount is not specified). The amount in controversy requirement is met.

III. PROCEDURAL REQUIREMENTS

A. Removal to this Court Is Proper. Pursuant to 28 U.S.C. §§ 1441(a)-(b) and 1446(a), Defendant files this Notice of Removal in the United States District Court for the Western District of Washington, which is the federal district court embracing the state court where Plaintiffs have brought the State Court Action - King County, Washington. Venue is proper in this district pursuant to 28 U.S.C. 1391(a) and 28 U.S.C. 128(b).

B. Removal Is Timely. Amtrak was served with a copy of the Summons and Complaint in the State Court Action on or about January 17, 2018. Yates Decl. ¶ 4. Defendant has filed this Notice within 30 days after its receipt of the Complaint in the State Court Action on or about January 4, 2018. As such, removal is timely. *See* 28 U.S.C. § 1446(b)(2)(B).

C. Consent. Consent is not required for removal under 28 U.S.C. § 1331 and there are no other defendants from whom to obtain consent to the extent this matter is removed under 28 U.S.C. § 1332.

D. Bond and Verification. Pursuant to Section 1016 of the Judicial Improvements and Access to Justice Act of 1988, no bond is required in connection with this Notice of Removal. Pursuant to Section 1016 of the Act, this Notice need not be verified.

E. Signature. This Notice of Removal is signed pursuant to Fed. R. Civ. P. 11. *See* 28 U.S.C. § 1446(a).

F. Pleadings and Process. True and correct copies of the pleadings on file in the State Court Action, including a current docket sheet, are attached to the Yates Decl. as **Exhibit**

A. *See* 28 U.S.C. § 1446(a). Amtrak has paid the appropriate filing fee to the Clerk of this Court
NOTICE OF REMOVAL TO FEDERAL COURT - 3

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upon the filing of this Notice.

G. Notice. Amtrak will promptly serve Plaintiffs and file with this Court its Notice of Removal to Plaintiffs, informing Plaintiffs that this matter has been removed to federal court. *See* 28 U.S.C. §§ 1446(a), (d). Amtrak will also promptly file with the Clerk of the Superior Court of Washington, County of King, and serve on Plaintiffs, a Notice to Clerk of Removal to Federal Court, pursuant to 28 U.S.C. § 1446(d).

WHEREFORE, this action should proceed in the United States District Court for the Western District of Washington, as an action properly removed thereto.

DATED this 19th day of January 2018.

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By: /s/ Tim D. Wackerbarth
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By: /s/ Andrew G. Yates
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By: /s/ Warren E. Babb, Jr.
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By: /s/ Rachel B. Greenlee
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greenleer@lanepowell.com

Attorneys for Defendant National Railroad
Passenger Corporation d/b/a Amtrak

CERTIFICATE OF SERVICE

I, hereby certify under penalty of perjury of the laws of the State of Washington that on the 19th day of January 2018, I caused to be served a copy of the attached document to the following person(s) in the manner indicated below at the following address(es):

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David M. Beninger
Andrew Hoyal
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Sabrina Mitchell

THE HONORABLE DOUGLAS NORTH

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

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WILMOTTE,

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Defendant.

No. 18-2-00455-1 SEA

**NOTICE TO CLERK OF REMOVAL
OF ACTION TO FEDERAL COURT**

TO: THE CLERK OF KING COUNTY SUPERIOR COURT;

**AND TO: ROBERT GELLATLY, DAVID BENINGER AND ANDREW HOYAL
and LUVERA LAW FIRM, and to ROBERT CLIFFORD, MICHAEL
KRZAK, SEAN DRISCOLL and CLIFFORD LAW OFFICES, Attorneys
for Plaintiff:**

NOTICE IS HEREBY GIVEN, pursuant to 28. U.S.C. § 1441 *et seq.*, that on January 19, 2018, Defendant National Railroad Passenger Corporation d/b/a Amtrak ("Amtrak"), by and through its attorneys, filed a Notice of Removal to Federal Court, removing this action to the United States District Court for the Western District of Washington.

True and correct copies of the Notice of Removal to Federal Court and the Notice to Plaintiff of Removal to Federal Court are attached hereto.

NOTICE TO CLERK OF REMOVAL OF ACTION TO FEDERAL
COURT - 1
No. 18-2-00455-1

019188.0392/7190485.1

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1 DATED this 19th day of January, 2018

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10 By /s/ Warren E. Babb, Jr.
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13 By /s/ Rachel B. Greenlee
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16 Attorneys for Defendant National Railroad
17 Passenger Corporation d/b/a Amtrak

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